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7 UNITED STATES DISTRICT COURT
 8 NORTHERN DISTRICT OF CALIFORNIA
 9 SAN FRANCISCO DIVISION

11 UNITED STATES OF AMERICA,

12 Plaintiff,

13 v.

14 EDMOND ROBLES, et al.

15 Defendants.

Case No. CR-14-102 CRB

**DEFENDANT EDMOND ROBLES'
 MOTION TO EXCLUDE EVIDENCE OF
 TEXT MESSAGES**

**HRG DATE: NOVEMBER 6, 2014
 TIME: 10:00 A.M.
 CTRM: 6, 17TH FLOOR**

17 By this Motion, Defendant Robles moves to exclude a text message sent on February 7, 2012 to
 18 Ian Furminger. In a discussion about purchasing a generator, Robles writes to Furminger, "They're
 19 hella money ... Sergio nigga". Defendant Robles moves to exclude this text exchange under Federal
 20 Rules of Evidence 401 and 403 as irrelevant, inviting speculation by the jury and because it is
 21 prejudicial.

22 **ARGUMENT**

23 **1. THE TEXT EXCHANGE IS NOT RELEVANT TO PROVE ANY ISSUE IN DISPUTE**
 24 **AND IS UNDULY PREJUDICIAL.**

25 Evidence is relevant if it has any tendency to make a fact more or less probable than it would be
 26 without the evidence, and if the fact is of consequence in determining the action. FRE 401. Even where
 27 relevant, evidence may be excluded if "its probative value is outweighed by the danger of unfair
 28 prejudice, confusion of the issues, or misleading the jury, or by considerations of undue delay, waste of

time, or needless presentation of cumulative evidence." FRE 403. Unfair prejudice is "an undue tendency to suggest decision on an improper basis, commonly, though not necessarily, an emotional one." *United States v. Allen*, 341 F.3d 870, 886 (9th Cir. 2003) (quoting Fed. R. Evid. 403, Advisory Committee Notes).

The government has indicated it will be introducing an excerpt from a conversation between Defendants Robles and Furminger on February 7, 2012, in which Furminger indicates he is looking to buy a generator. (Attached as Exhibit A). In the conversation, Defendant Robles texts, "They're hella money ... Sergio nigga." This exchange should be excluded under Rule 401 because it is not relevant to prove any of the counts charged. First, even in the context of the entire conversation, the meaning of that particular text message is entirely unclear. Second, this correspondence is not relevant to show any wrongdoing by Defendant Robles. His mere reference to "Sergio" is not relevant to show any element of a conspiracy, particularly an agreement. In fact, Furminger appears to suggest a variety of ways to purchase or rent a generator, which Robles rejects. The text is also irrelevant to the charges because it falls well outside the timeframe of the alleged conspiracies and it was not included on the government's list of anticipated 404(b) evidence.

The text exchange is highly prejudicial under Rule 403. The epithets "fag" and "nigga" have no evidentiary value and would simply invite the criticism of the jurors. Even if the correspondence were sanitized, the vague nature of the conversation invites the jurors to speculate about what is meant by "...Sergio". The defense is unaware of any statement by Sergio Sanchez that he ever sold Robles a generator. Because no such statements have been provided, the text message should not be admitted.

2. IF THE COURT ADMITS THE TEXT EXCHANGE, RULE 403 REQUIRES THAT IT BE SANITIZED AND LENGTHENED TO PROVIDE CONTEXT.

Any introduction of this text exchange is unduly prejudicial under Rule 403. Nevertheless, if the Court admits this evidence, the exchange must be sanitized to avoid undue prejudice to Defendant Robles. Specifically, the defense requests that this Court order redaction of the epithets "fag" and "nigga" as well as Robles' comment, "Fuck that." These words have no evidentiary value, are not relevant to prove any fact or issue in dispute, and invite the criticism of the jury.

For the foregoing reasons, Defendant Robles respectfully requests that the Court exclude the text exchange in question as irrelevant and unduly prejudicial. Should the Court admit the text message, Defendant Robles requests that it be sanitized and lengthened as requested above.

Respectfully submitted,

By: /s/
TERESA CAFFESE
Attorney for Defendant
EDMOND ROBLES